

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2642

PETITION OF TACO BELL, INC.

OPINION OF THE BOARD

(Opinion Adopted April 5, 2006)

(Effective Date of Opinion: April 28, 2006)

Case No. S-2642 is an application for a special exception, pursuant to Section 59-G-2.16 of the Montgomery County Code, for a drive-in restaurant. The Hearing Examiner for Montgomery County held a hearing on the application on January 13 and January 25, 2006, closed the record on February 1, 2006, and on March 24, 2006 issued a Report and Recommendation for denial of the special exception.

The subject property is located at 16531 Frederick Road, Gaithersburg, Maryland, 20877, in the C-2 Zone.

Decision of the Board: Special Exception **Denied**.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on April 5, 2006. After careful consideration and review of the record, the Board concurs with the Hearing Examiner and finds that the special exception must be **denied**.

The Board finds that the non-inherent adverse effects of the proposed special exception combine to render it incompatible with adjacent residential properties. The subject site is in very close proximity to residential properties [Report and Recommendation, p. 8]. The Board further finds that the proposed hours of operation until 2:00 a.m., seven days a week, and the apparent impossibility of providing adequate buffering between the special exception and residential properties are additional non-inherent adverse effects, which will be impermissibly adverse to the nearby residences, because of that proximity. In addition, the special exception would have inherent adverse effects: high levels

of traffic activity, noise, fumes and trash, which, again, in close proximity to residential properties, without adequate buffering, would make the use incompatible. The Board adopts, for the reasons set out in the Hearing Examiner's Report and Recommendation, the Hearing Examiner's findings that the petition does not satisfy the specific requirements of Sections 59-G-2.16(a),(b),(c),(d), or (f), or the general requirements of Sections 59-G-1.21(a)(2),(4),(5),(6),(8) or 59-G-1.21(c).

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Wendell M. Holloway and Caryn L. Hines, Presiding, in agreement, and Allison Ishihara Fultz, Chair necessarily not participating, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Caryn L. Hines
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of April, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of

the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.